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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,976	02/19/2004	William Sherman	1734-0018	1046

7590 12/15/2008  
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EXAMINER
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BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
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3628

MAIL DATE	DELIVERY MODE
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12/15/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/781,976	<b>Applicant(s)</b> SHERMAN ET AL.	
	<b>Examiner</b> Igor N. Borissov	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Response to Amendment***

Amendment received on 10/06/2008 is acknowledged and entered. Claims 1, 4, 7 and 19 have been amended. Claims 1-21 are currently pending in the application.

### ***Claim Rejections - 35 USC § 112***

Claim Rejections under 35 USC § 112 have been withdrawn due to the Applicant's amendment.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

**Claims 1, 4, 5 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

Claims 1, 4, 5 are directed to a series of steps. In order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes should positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus which accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 1, 4, 5 identify neither the apparatus performing the recited steps nor any transformation of underlying materials. The steps of: "receiving information corresponding to the provider" and "associating a meter proxy with the at

Art Unit: 3628

least one leaf node” does not require neither the meter per se, no any other technology and could be understood as merely mental activity. Thus, claims 1, 4 and 5 do not positively recite the other statutory class to which it is tied, and, accordingly, are directed to non-statutory subject matter.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3 and 5-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Kelly et al. (US 6,088,659).**

Kelley et al. teaches:

Claims 1, 7, 14,

receiving information corresponding to the provider and at least one entity that receives the utility commodity from the provider (Fig. 1);

forming a tree comprised of a root node and at least one leaf node emanating from the root node, the root node corresponding to the provider and the at least one leaf node corresponding to the at least one entity (C. 15, L. 18-24);

associating a meter proxy with the at least one leaf node, the meter proxy containing data from meter readings, the meter proxy comprising an interface to data generated by a physical utility meter (C. 36, L. 39-49);

associating at least some of the received information corresponding to the provider and the at least one entity with the root nodes and the at least one leaf node, respectively (C. 37, L. 6-11);

Art Unit: 3628

associating actions relating to the providing of one of the utility commodity with each of the nodes based on the received information associated therewith (C. 33, L. 6-23; C. 37, L. 64 - C. 38, L. 2).

Claim 2. The method of claim 1, wherein the meter proxy provides meter change information regarding the physical utility meter (C. 36, L. 39-49).

Claim 3. The method of claim 1, wherein the meter proxy provides data relating to load profiles regarding the physical utility meter (C. 29, L. 1-5).

Claim 5. The method of claim 1 further comprising associating the meter proxy with a set of active elements and associating the set of active elements with the at least one leaf node (C. 36, L. 39-49).

Claim 6. The method of claim 1 wherein the meter proxy further comprises an interface to data generated by an electricity meter (Figs. 1, 4; C. 41, L. 32-39).

Claims 8-13, 15-21, same reasoning as applied above.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kelly et al.**

Claim 4.

Art Unit: 3628

Kelly et al. discloses:

segmenting the tree into segments having at least one node therein (Fig. 28);

assigning a unique identifier to each of the segments (Fig. 28);

associated at least one segment, if necessary, with the at least one user based on the identifier of the at least one segment (C. 47, L. 2-4);

allowing the at least one user access to the at least one segment that the user is associated with (C. 47, L. 2-4).

Kelly et al. does not specifically teach that said "allowing" step is conducted on the exclusive basis.

However, Kelly et al. does teach that the Security Service authenticates the identities of users and authorizes access to resources (C. 14, L. 42-43), thereby suggesting said feature.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kelly et al. to include allowing the at least one user access to *only* the at least one segment that the user is associated with, as suggested in Kelly et al., because it would advantageously enhance the security of the Kelly's system.

### ***Response to Arguments***

Applicant's arguments filed 10/06/2008 have been fully considered but they are not persuasive.

Applicant argues that claims 1, 4 and 5 recite specific, substantial and credible invention (a process) producing a useful result, and, therefore, claim rejections under 35 U.S.C. 101 is improper.

In response to this argument, the examiner stipulates that in order for a series of steps to be considered a proper process under § 101, a claimed process should either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform

Art Unit: 3628

underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes should positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus which accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 1, 4, 5 identify neither the apparatus performing the recited steps nor any transformation of underlying materials. The steps of: “receiving information corresponding to the provider” and “associating a meter proxy with the at least one leaf node” does not require neither the meter per se, no any other technology and could be understood as merely mental activity. Thus, claims 1, 4 and 5 do not positively recite the other statutory class to which it is tied, and, accordingly, are directed to non-statutory subject matter.

Applicant argues that Kelley does not teach the limitations of claim 1, including “forming a tree comprised of a root node and at least one leaf node emanating from the root node, the root node corresponding to the provider and the at least one leaf node corresponding to the at least one entity”.

In response to this argument, it is noted that claim language is broad and not specific. It appears that claim 1 is concerned only with associating information related to utility providing services with information related to utility consumers (categories), wherein said information is expressed (or represented) via a logical structure or interdependence of said categories. Information as to: “forming a tree comprised of a root node and at least one leaf node” could be understood as nothing more than abstract scheme characterizing participating entities and their functionalities or/and interrelationship. And Kelley explicitly discloses such an arrangement in utility distribution environment. Specifically, Kelley teaches that interrelation of participating entities are expressed via Cell Directory Service (CDS) which “implements a hierarchy of names arranged in a tree structure in which every item has exactly one parent and

Art Unit: 3628

zero or more children. The CDS provides naming within a local set of nodes called a cell" (C. 15, L. 18-24).

The remaining applicant's arguments essentially repeat the arguments presented above; therefore, the responses presented by the examiner above are equally applicable to the remaining applicant's arguments.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Art Unit: 3628

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Igor N. Borissov/

Primary Examiner, Art Unit 3628

12/10/2008